

May 5, 1992  
REPORT TO THE COMMITTEE  
ON PUBLIC SERVICES AND SAFETY

PUBLIC CONSUMPTION OF ALCOHOL

The Public Services and Safety Committee at its February 19, 1992, meeting requested the City Attorney to return to Committee with a draft ordinance which, by amending San Diego Municipal Code section 56.54, extends the ban on public consumption of alcohol into the central and southeastern division areas of the San Diego Police Department. The committee also requested the City Attorney to analyze any legal issues which may be associated with this ordinance. This report is intended to comply with those requests.

The attachment contains the City Attorney Digest of the draft ordinance, proposed strikeouts of old language and underlining of new language in the draft ordinance and the draft ordinance as amended.

No significant legal issues have been identified. The draft amendments do not conflict with the general law and constitute a proper exercise of the City's broad "police powers." *People v. Brewer*, 235 Cal. App. 3d 990 (1991).

The current language in SDMC section 56.54 requires some changes to conform with the holding in *People v. Brewer*, 235 Cal. App. 3d 909 (1991). The First District Court of Appeals held in *Brewer* that the portion of an Oakland city ordinance prohibiting the public consumption of alcoholic beverages was valid and severable from the unconstitutional part prohibiting the possession of an open container of alcoholic beverages in public. SDMC section 56.54, as the Oakland ordinance, prohibits both public consumption and possession of open containers of alcoholic beverages. It is recommended that the invalid portions of SDMC section 56.54 prohibiting possession of open containers of alcoholic beverages be deleted. Such changes will be made when requested by the Committee.

A memorandum dated April 13, 1992, from Councilmember John Hartley to the City Manager with copies to members of the Committee requested inclusion of areas located in the eastern police area south of Interstate 8 and those communities south of the western police area located in the Third City Council District. The City Attorney will be prepared to expand the draft ordinance to include areas located in the Third Council District or other areas if so requested by the Committee.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

JMB:mk:520.1(043.1)

Attachments

RC-92-36